

INTERIM IRM PROCEDURAL UPDATE

DATE: 03/13/2012

NUMBER: WI-21-0312-0643

SUBJECT: Form 5884, WOTC, Returning Heroes and Wounded Veterans and Repeal 3% Withholding Government Entities

AFFECTED IRM(s)/SUBSECTION(s): 21.7.4

CHANGE(s):

ISSUE IRM 21.7.4.4.8.3.2.6 - Add new subsection as follows: Form 5884, Work Opportunity Credit - Section 261, Returning Heroes and Wounded Warriors Work Opportunity Tax Credits, of the VOW to Hire Heroes Act of 2011, Title II, subtitle D, of Pub. L. No. 112-056.

(1) The Work Opportunity Credit (WOTC) which expired for workers who began working after December 31, 2011, is extended for one year for those employers hiring "**qualified veterans only**." Section 261, Returning Heroes and Wounded Warriors Work Opportunity Tax Credits, of the VOW to Hire Heroes Act of 2011, Title II, subtitle D, of Pub. L. No. 112-056, enhances the work opportunity credit by providing two new categories to the qualified veteran targeted group. The Act extended the credit only with respect to qualified veterans who begin work for the employer on or before December 31, 2012. The Act also increases the qualified first-year wages used to figure the credit. **For-profit organizations claim the credit on Form 5884, Work Opportunity Credit.** See the General Instructions for Form 5884 for more specific information on claiming the credit.

(2) In addition, the Act amends IRC section 52 and IRC section 3111 to make a credit available to "qualified tax-exempt organizations" that hire qualified veterans for which the work opportunity Credit (WOTC) would have been allowable under IRC section 51 if the organization were not a qualified tax-exempt organization. Specifically, the Act adds new IRC section 3111(e), which permits qualified tax-exempt organizations that hire qualified veterans on or after November 22, 2011 and on or before December 31, 2012, to claim a credit against payroll taxes. The credit is taken on the employer share of social security tax imposed under IRC section 3111(a). The credit for **tax-exempt organizations is claimed on new Form 5884C, Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans.** See SERP Alert 12A0157 and IRM 21.7.2.5.22, Form 5884C, Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans, for more information on how tax-exempt organizations claim the credit on their employment tax return.

(3) Section 261(b) of the Act amends IRC section 51(d)(3)(A). The term “qualified veteran”, as amended, means any veteran who is certified by the Designated Local Agency (DLA) as any of the following:

- Being a member of a family receiving assistance under a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 for at least a 3-month period ending during the 12-month period ending on the hiring date.
- Entitled to compensation for a service-connected disability, and (I) having a hiring date which is not more than 1 year after having been discharged or released from active duty in the Armed Forces of the United States, or (II) having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6 months.
- Having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 4 weeks (but less than 6 months).
- Having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6 months.

(4) The WOTC is equal to 25-percent (16.25 percent for tax-exempt organizations) of the qualified first-year wages for employees who worked for the employer at least 120 hours but fewer than 400 hours, and 40-percent (26-percent for tax-exempt organizations) of the qualified first-year wages for employees who worked for the employer at least 400 hours. Under IRC section 51(b)(3) as amended by the Act, the amount of the first-year wages which may be taken into account with respect to any individual shall not exceed:

- \$6,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(i) (a veteran certified as being a member of a family receiving assistance under a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 for at least a 3-month period ending during the 12-month period ending on the hiring date) and subsection (d)(3)(A)(iii) (a veteran certified as having aggregate periods of unemployment of at least 4 weeks but less than 6 months in the year prior to being hired);
- \$12,000 per year in the case of any individual who is a qualified veteran by reason of Code section 51(d)(3)(A)(ii)(I), a disabled veteran certified as having a hiring date which is not more than 1 year after having been discharged or released from active duty in the Armed Forces of the United States;
- \$14,000 per year in the case of any individual who is a qualified veteran by reason of Code section 51(d)(3)(A)(iv), a veteran certified as having

aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6-months; and

- \$24,000 per year in the case of any individual who is a qualified veteran by reason of Code section 51(d)(3)(A)(ii)(II), a disabled veteran certified as having aggregate periods of unemployment during the 1-year period ending on the hiring date which equal or exceed 6-months.

(5) Section 261(c) of the Act amends IRC section 51(d)(13) and provides for a simplified certification process. An employer must obtain certification that an individual is a targeted group member before the employer may claim the credit. Certification of an individual's targeted group status is obtained from a DLA (a State employment security agency established in accordance with 29 U.S.C sections 49-49n). An employer must submit Form 8850, *Pre-screening Notice and Certification Request for the Work Opportunity Credit*, to the DLA not later than the 28th day after the individual begins work for the employer. See the Instructions for Form 8850 for more information.

(6) Notice 2012-13 provides guidance on the Returning Heroes and Wounded Warriors Work Opportunity Tax Credits. The notice also provides employers who hire qualified veterans additional time beyond the 28-day deadline in IRC section 51(d)(13) for submitting Form 8850 to DLAs. The notice provides additional guidance on electronic signature and electronic submission of Form 8850 and also informs all employers that the Internal Revenue Service (IRS) will allow the signature and submission of Form 8850 by facsimile to DLA that choose to accept such submissions.

(7) Per paragraph (2) above, tax-exempt organization claim a credit against payroll taxes. The credit for tax-exempt organizations is claimed on new Form 5884C, Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans. Per paragraph (1) above, for other employers, the credit is a non-refundable credit and is claimed on Form 5884, *Work Opportunity Credit*. Action required:

- Math verify Form 5884.
- Input TC 291 to increase the credit and a TC 290 to decrease the credit.

IRM 21.7.4.4.10.1 - Add new Subsection - 3-percent Withholding on Certain Payments Made to Vendors by Government Entities as Follows:

(1) Section 511(a) of The Tax Increase Prevention and Reconciliation Act of 2005, P. L. 109-222, added new section 3402(t), Extension of Withholding to Certain Payments Made by Government Entities, to the Internal Revenue Code. The provision provides that the government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-state agencies) making any payment to any person providing any property or services (including any payment made in

connection with a government voucher or certification program which functions as a payment for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3-percent of such payment. The provision is effective with payments made after December 31, 2010.

(2) Section 1511, Delay in Application of Withholding Tax on Government Contractors, of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, postpones the effective date for withholding the 3-percent tax on payments listed in paragraph (1) above, from December 31, 2010 to December 31, 2011.

(3) Section 102, Repeal of Imposition of 3-percent Withholding on Certain Payments Made to a Government Entities, of the Three Percent Withholding Repeal and Job Creation Act, Title I, P.L. 112-056, repeals IRC section 3402(t). Therefore, Government entities are not required to withhold the 3-percent tax on certain payments made to vendors after December 31, 2011.